

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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**DAKOTA IMAGING, INC.,**

**Plaintiff/Counterclaim  
Defendant,  
v.**

**SANDEEP GOEL and  
PRADEEP GOEL,**

**Defendants/Counterclaim  
Plaintiffs,  
v.**

**DAKOTA IMAGING, INC.,  
ENVOY CORPORATION, and  
WEB MD CORPORATION,**

**Counterclaim  
Defendants**

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**Civil Action No. 1:05-CV-296 (SLR)**

**JURY TRIAL DEMANDED**

**MOTION FOR LEAVE TO FILE SUPPLEMENT TO REPLY BRIEFS OF DAKOTA  
IMAGING, INC. (D.I. 43), ENVOY CORPORATION AND WEBMD CORPORATION  
(D.I. 42) IN SUPPORT OF THEIR MOTIONS TO DISMISS COUNTERCLAIM**

Plaintiff/Counterclaim Defendant Dakota Imaging, Inc. ("Dakota") and Counterclaim Defendants Envoy Corporation ("Envoy") and WebMD Corporation ("WebMD"), pursuant to Federal Rule of Civil Procedure 15(d), respectfully request leave of this Court to file a joint supplement to their respective Reply Briefs in support of their motions to dismiss (Exhibit 1 hereto).<sup>1</sup> In support of this motions, Dakota, Envoy and WebMD state as follows:

1 On June 20, 2005, pursuant to Section 1.7(c) of the Merger Agreement, Envoy submitted to the Goels an Earnout Certificate containing a calculation of the Earnout payment for

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<sup>1</sup> Envoy and WebMD jointly moved to dismiss the Goels' Counterclaim in its entirety (D.I. 7). Dakota moved separately to dismiss only those portions of the Goels' Counterclaim which relate to Earnout payments under the Merger Agreement (D.I. 9).

the 12-month period ending March 31, 2005. The Earnout Certificate indicates that the Goels are not entitled to Earnout payments because Dakota failed to achieve any increase in earnings in the first year after the closing of the Merger Agreement.

2 On July 11, 2005,<sup>2</sup> the Goels, in accordance with the terms of Section 1 7(c), sent Envoy written notice (the “Notice of Disagreement”) that it disagreed with the Earnout calculation, triggering the Merger Agreement’s mandatory dispute resolution process regarding potential Earnout payments. The Notice of Disagreement was received by Envoy on July 12, 2005, too late for Dakota, Envoy and WebMD to reference in their reply briefs, which were due and filed on July 11, 2005.

3 The Goels’ initiation of the Merger Agreement’s mandatory dispute resolution process further demonstrates that those portions of the Goels’ Counterclaim relating to their purported rights to Earnout payments should not be subject to litigation, and the Counterclaim Defendants’ joint supplement to their respective Reply Briefs will assist the Court in reaching an informed and just decision with respect this matter.

4 The Goels’ counsel have been informed of this motion pursuant to Local Rule 7.1.1, and they have given their assent.

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<sup>2</sup> The first page of the Notice of Disagreement is dated July 8, 2005, but the header on the second page of the notice bears the date of July 11, 2005 and Envoy received it on July 12, 2005.

WHEREFORE, Dakota, Envoy and WebMD move the Court to grant them leave to file the attached joint supplement to their respective Reply Briefs.



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Date: July 19, 2005

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**ORDER**

The Court having considered Plaintiff's and Counterclaim-Defendants' Motion for Leave to File Supplement to Reply Brief (the "Motion"), and for good cause having been shown,

IT IS HEREBY ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2005 that said Motion is GRANTED

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Honorable Sue L. Robinson  
UNITED STATES DISTRICT COURT JUDGE

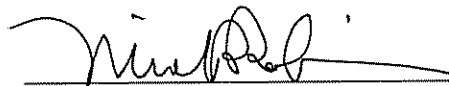
**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2005, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

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I further hereby certify that on July 19, 2005, I have e-mailed the document(s) to the following non-registered participants:

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